Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of)	
Application of Cellco Partnership d/b/a)	WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC For)	W 1 Docket 110. 12 1
Consent To Assign Licenses)	
Application of Cellco Partnership d/b/a)	
Verizon Wireless and Cox TMI Wireless,)	
LLC For Consent To Assign Licenses)	
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METROPCS COMMUNICATIONS, INC. COMMENTS ON THE IMPACT OF THE VERIZON WIRELESS/ T-MOBILE SPECTRUM ASSIGNMENTS ON THE PENDING VERIZON WIRELESS/SPECTRUMCO AND VERIZON WIRELESS/COX TRANSACTIONS

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TABLE OF CONTENTS

I.	INTE	RODUCTION AND SUMMARY	1
II.		THER DIVESTITURES ARE REQUIRED TO ADDRESS THE REHOUSING PROBLEM	4
III.	OTH	ER MATERIAL ISSUES REMAIN UNRESOLVED	14
	A.	The Trafficking Issue Remains	14
	B.	The Need For Roaming Conditions Remains	20
IV.	CON	CLUSION	23

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I. INTRODUCTION AND SUMMARY

MetroPCS Communications, Inc.¹ files these comments on the impact of certain proposed spectrum assignments between Cellco Partnership d/b/a Verizon Wireless ("Verizon") and T-Mobile License LLC ("T-Mobile")² on the pending acquisition by Verizon of spectrum licenses

¹ MetroPCS Communications, Inc. is filing these comments on its own behalf and on behalf of its FCC-licensed subsidiaries (collectively, "MetroPCS").

² See T-Mobile/Verizon Wireless License Application, File No. 0005272585. See also Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC Seek FCC Consent to the Assignment of Advanced Wireless Service Licenses, WT Docket No. 12-175, DA 12-999 (rel. June 26, 2012). The Wireless Telecommunications Bureau ("WTB") established a 14-day period in which interested parties can comment on the impact of the Applications on the transactions in WT Docket No. 12-4. See Wireless Telecommunications Bureau Seeks Comment on the Impact on the Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile to Assign AWS-1 Licenses, WT Docket No. 12-4, DA 12-998 (rel. June 26, 2012).

from SpectrumCo, LLC ("SpectrumCo"), Cox TMI Wireless LLC ('Cox") and Leap Wireless International Inc. ("Leap").³ The licenses that Verizon would assign to T-Mobile include 47 licenses (covering all or portions of 98 CMAs) that Verizon is seeking to acquire from SpectrumCo, Cox and Leap. As is set forth in detail below, MetroPCS applauds the divestiture of spectrum by Verizon to T-Mobile, and accordingly does not object to the T-Mobile/Verizon assignment application in File No. 0005272585. The consistent position of MetroPCS with respect to the proposed acquisition by Verizon of spectrum licenses from SpectrumCo, Cox and Leap has been that approval of those transactions without significant divestitures would result in Verizon warehousing 20 to 40 MHz of scarce broadband spectrum in a manner contrary to the public interest.⁴ MetroPCS sees the proposed sale of spectrum to T-Mobile and the realignment of the parties' respective AWS spectrum holdings⁵ as pro-competitive and a step in the right direction to resolving the issues MetroPCS identified with respect to the Verizon/SpectrumCo transaction.

However, analysis reveals that the proposed divestitures are inadequate to address the serious warehousing problem and other public interest concerns identified by MetroPCS and others. As MetroPCS and others have amply demonstrated, the Commission must analyze the

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³ See Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to Assignment of AWS-1 Licenses, WT Dkt. 12-4, *Public Notice*, 27 FCC Rcd 360 (Jan. 19, 2012); Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses, *Public Notice*, 26 FCC Rcd 16810 (Dec. 14, 2011).

⁴ See MetroPCS Petition to Deny filed February 21, 2012 in WT Docket No. 12-4; see also MetroPCS Reply to Joint Opposition to Petitions to Deny and Comments filed March 26, 2012.

⁵ In addition to the proposed assignments of spectrum which result in net changes in the parties' respective holdings, the transaction involves certain intra-market swaps of equal amounts of AWS spectrum in order to increase the amount of contiguous spectrum held by each. This aspect of the transaction serves the public interest by enhancing capacity and data throughout.

impact on competition of the proposed SpectrumCo/Cox/Leap acquisitions on a market-by-market basis. Such analysis reveals that, even with the proposed sale to T-Mobile, Verizon would still hold 20 MHz of undeveloped spectrum throughout most of the U.S. and up to 40 MHz of unused spectrum in many major markets. This being the case, the T-Mobile transaction does not solve the identified problems; at most it represents a modest first step toward the more fulsome divestitures that are necessary in order for the Commission to make the requisite finding that approval of the SpectrumCo/Cox/Leap transactions will serve the public interest.

The T-Mobile transaction also fails to mitigate any of the other substantial public interest concerns that have been raised about the pending Verizon/SpectrumCo/Cox/Leap transactions. For example, MetroPCS and others have made well-documented claims that these transactions will have a serious negative impact on the 4G LTE roaming market by removing four potential roaming partners and thereby exacerbating Verizon Wireless' unwillingness to offer roaming on commercially reasonable terms. This particular roaming concern has been exacerbated by the recent report that a group of cable companies, including those that are parties to the Verizon/SpectrumCo/Cox transactions, have entered into cooperative shared Wi-Fi arrangements. The strategic, going forward relationships that these cable companies have entered into with Verizon raise the specter that Verizon will be in a position to further enhance its roaming dominance over wireless competitors by adding Wi-Fi roaming with the cable companies on more favorable terms than it is made available to others. Even if this is not the plan, the Commission needs to take steps to mitigate the loss of the cable companies as potential facilities-based wireless broadband roaming partners by assuring that their shared Wi-Fi networks are made available to others on a commercially reasonable basis.

II. FURTHER DIVESTITURES ARE REQUIRED TO ADDRESS THE WAREHOUSING PROBLEM

The Verizon/T-Mobile transaction proposes the exchange of AWS spectrum between the parties in 218 Cellular Market Areas ("CMAs"). In 76 CMAs, the transaction involves intramarket swaps of equal amounts of AWS spectrum.⁶ While these swaps will be beneficial to the parties by increasing the prospect for efficient use of their spectrum holdings, because these one-for-one spectrum swaps result in no change to the aggregate spectrum held by either party, this aspect of the transaction does not mitigate in any respect the spectrum concentration and warehousing concerns that have been raised with respect to the proposed acquisitions of spectrum licenses by Verizon from SpectrumCo, Cox and Leap.

In 125 CMAs, the Verizon/T-Mobile transaction proposes a net transfer of AWS spectrum to T-Mobile – 10 MHz in 111 CMAs and 20 MHz in the other 14. However, notably absent from this list are most of the largest CMAs in the country including Los Angeles, New York, Chicago, Dallas-Forth Worth, Houston, Atlanta, Boston, San Francisco, Miami, Phoenix, San Diego, Denver-Boulder, Baltimore, St Louis, Tampa-St Petersburg, San Juan, Portland, Pittsburgh and Las Vegas. Worse yet, in certain major markets, including San Francisco and San Diego, Verizon is actually increasing its net spectrum holdings as a result of the T-Mobile transaction. Given the extreme need for spectrum by the rest of the industry and Verizon's history of holding undeveloped spectrum, these facts must be a matter of significant concern to the Commission.

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⁶ See File No. 0005272585, Exhibit 1, p.1.

⁷ In both San Francisco and San Diego, T-Mobile is assigning 30 MHz of spectrum to Verizon in exchange for 20 MHz resulting in a net increase in the Verizon spectrum holdings there of 10 MHz. The assumptions upon which this base case analysis is based are set forth in the study appended to this letter.

The following chart, which is based upon the analysis in the public record in this proceeding of Professor Judith Chevalier and The Analysis Group, ⁸ demonstrates that LTE overlay spectrum holdings resulting from the Verizon/SpectrumCo/Cox/Leap transactions are highly concentrated based upon the Department of Justice's 2010 Horizontal Merger Guidelines in the following markets that are unaffected by the proposed divestiture of spectrum to T-Mobile and, the net increases in the HHIs is significant:

Population Rank	CMA	Population	Pre- Transaction HHI	Post- Transaction HHI	Net Increase in HHI
1	Los Angeles	17,174,570	3,022	3,363	341
2	New York	16,808,740	3,646	4,125	479
3	Chicago	8,507,569	3,749	4,340	591
4	Dallas-Fort Worth	6,557,576	2,582	2,849	267
5	Houston	5,637,211	2,666	3,444	778
7	Atlanta	4,914,273	3,713	4,277	564
10	Boston	4,508,380	2600	2,971	371
11	San Francisco ⁹	4,375,435	2,752	3,133	381
12	Miami	4,302,210	4,845	5,385	540
13	Phoenix	4,087,980	2,580	2,663	83
15	San Diego	3,088,346	2,504	2,849	345
16	Denver- Boulder	2,804,706	2,582	2,849	267
17	Baltimore	2,655,604	3,167	3,718	551
19	St. Louis	2,636,325	2,781	2,781	0
20	Tampa – St Petersburg	2,593,519	3,713	4,277	564
21	San Juan	2,271,749	6,122	6,122	0
22	Portland	2,119,028	2,580	2,663	83
23	Sacramento ¹⁰	1,973,687	2,666	3,167	501

⁸ See Letter of Jean L. Kiddoo to Marlene H. Dortch in WT Docket No. 12-4 filed June 15, 2012 at Exhibit 1.

⁹ The calculations by The Analysis Group predated the announced T-Mobile transaction and thus do not fully account for the increased concentration that would result in San Francisco and Sacramento where Verizon will end up with net increases in spectrum.

¹⁰ See note 9 supra.

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Population Rank	CMA	Population	Pre- Transaction HHI	Post- Transaction HHI	Net Increase in HHI
24	Pittsburgh	1,959,627	3,384	3.941	557
25	Las Vegas	1,926,570	2,108	2,443	335
				Median	381
				Increase	361

As the Commission knows, the Horizontal Merger Guidelines define markets with an HHI of between 1500 and 2500 as "Moderately Concentrated," and markets with an HHI of 2,500 or greater as "Highly Concentrated." Also, increases in HHI of more than 100 points are significant, particularly if the increase pertains to a market in the Highly Concentrated category. In 16 of the above markets, the increase in HHI is over 200 and in 14 the increase is over 300. While the Commission has, on occasion in the past, approved mergers that served to increase HHIs in particular markets, it generally has done so in the face of compelling evidence that the proposed transaction would result in pro-competitive benefits and meet substantial unsatisfied needs of customers. Here, there is compelling evidence that Verizon has not made beneficial use of large swaths of spectrum it already holds, and has no *bona fide* near term need for additional spectrum. Also, as the Commission well knows, recent consolidation in the wireless broadband industry has prevented the Commission of late from finding that the wireless industry is effectively competitive, ¹² which means that the Commission must be more vigilant than in the past in disapproving transactions that result in significant increases in concentration. Under

¹¹ See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, FCC 08-258, at Section V (rel. Nov. 10, 2008).

¹² See Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Wireless Services, WT Docket No. 10-133, Fifteenth Report, FCC 11-103, released June 27, 2011, p. 5.

these circumstances, no compelling public interest reason exists to allow this rapidly consolidating broadband wireless market to become further concentrated. The inescapable conclusion is that the proposed T-Mobile transaction does not address the serious public interest concerns that are raised by the proposed Verizon/SpectrumCo/Cox/Leap transactions, but rather would still allow an anti-competitive concentration in many important markets.

Notably, many of the larger markets that have been exempted from the divestiture to T-Mobile were not among the 18 hand-picked markets for which Verizon Wireless voluntarily provided a market-by-market review of its projected capacity constraints.¹³ Specifically,

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were not included in the 18 markets for which Verizon provided maps that purported to show that its existing spectrum will not meet demand by the end of 2015 (or in some cases earlier). Nor did the supplemental information provided by Verizon in response to the Commission's data requests adequately demonstrate substantial near term need for additional spectrum in these markets.

The alarming increase in the HHIs is particularly troubling given the type of aggregation that is taking place here. The record in this proceeding shows that (1) Verizon has a great deal of spectrum that it has held for years in major metropolitan areas *without using it;* (2) Verizon uses

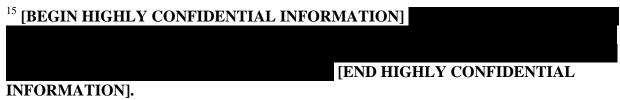
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¹³ See Joint Opposition to Petitions to Deny and Comments filed by Verizon, SpectrumCo and Cox on March 2, 2102 in WT Docket No. 12-4 at Exhibit 2 (Supplemental Declaration of William H. Stone).

the spectrum it has deployed less efficiently than other carriers; ¹⁴ (3) Verizon, thus, has no near term need for the spectrum it proposes to acquire; ¹⁵ (4) nonetheless, Verizon is proposing to acquire an additional 20 MHz spectrum from the other principal warehouser of spectrum – SpectrumCo – which also has held scarce spectrum for an extended period of time without providing beneficial service to the public; (5) the industry is experiencing a significant shortage of useable spectrum; and (6) therefore, Verizon has a competitive incentive to hoard spectrum to prevent other carriers from acquiring it to compete more effectively. This combination of circumstances is no doubt what has caused Verizon to seek to salvage its SpectrumCo, Cox and Leap acquisitions by divesting spectrum to T-Mobile. However, Verizon's effort to exclude most of the primary markets in the country from the divestiture is transparent and cannot be deemed sufficient by the Commission to address the identified concerns.

The MetroPCS concern over the sufficiency of the showings by Verizon of its near term need for additional spectrum is heightened by its continuing misstatements regarding the capacity and capabilities of its current spectrum holdings. For example, Verizon recently stated that "the company requires, at a minimum, a 5x5 PCS spectrum block to meet its service objectives, and the spectrum must be available across an entire market. LTE and CDMA technologies cannot share the same spectrum block in proximity to one another without

¹⁴ See, e.g., Letter of Jean L. Kiddoo to Marlene H. Dortch in WT Docket No. 12-4 filed May 30, 2012 at Exhibit 1 (Declaration of Dennis Robertson demonstrating, *inter alia*, that, properly viewed, Verizon's spectrum efficiency "is seen to lag behind the rest of the industry, in many cases by a wide margin"). See also, MetroPCS Reply to Joint Opposition to Petition to Deny and comments filed March 26, 2012 (demonstrating that the Verizon spectral efficiency claims are meaningless).



significant service degradation." However, MetroPCS' own experience demonstrates that networks with adjacent LTE and CDMA services can operate without significant degradation. For example, in Boston and Philadelphia, MetroPCS has two CDMA carriers and a 1.4 MHz LTE carrier adjacent to each other in a 5 MHz bandwidth. At present MetroPCS utilizes a 475 kHz guardband between the LTE and CDMA channels, but it has been advised by its equipment manufacture that this guardband could be as small as 125 kHz without adversely affecting performance. Indeed, Verizon itself has admitted in earlier filings that "LTE can be deployed on less than 10 MHz" and has specifically acknowledged the possible use of a "1.4x1.4 MHz channel." Thus, Verizon's persistent claim that "PCS spectrum cannot be used for LTE until all adjacent cell sites using the same 5x5 block have been cleared of CDMA operations" is vastly overstated. The 5x5 LTE deployment that Verizon seeks is not a "necessity" but a "want." While the public interest might be served by satisfying this "want" were the industry not experiencing a severe shortage of spectrum, the requisite public interest finding cannot be made in the current situation.

The most persuasive evidence that the proposed divestitures to T-Mobile do not resolve the warehousing concern is found in the internal documents that Verizon submitted in response to the Commission's requests for information. As has been well-summarized by Free Press in an *ex parte* presentation filed on June 4, 2012, those documents contain fatal admissions that Verizon does not need the vast majority of the licenses that it proposes to acquire from

¹⁶ *See* Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 31, 2012 ("Verizon May 31 *Ex Parte*").

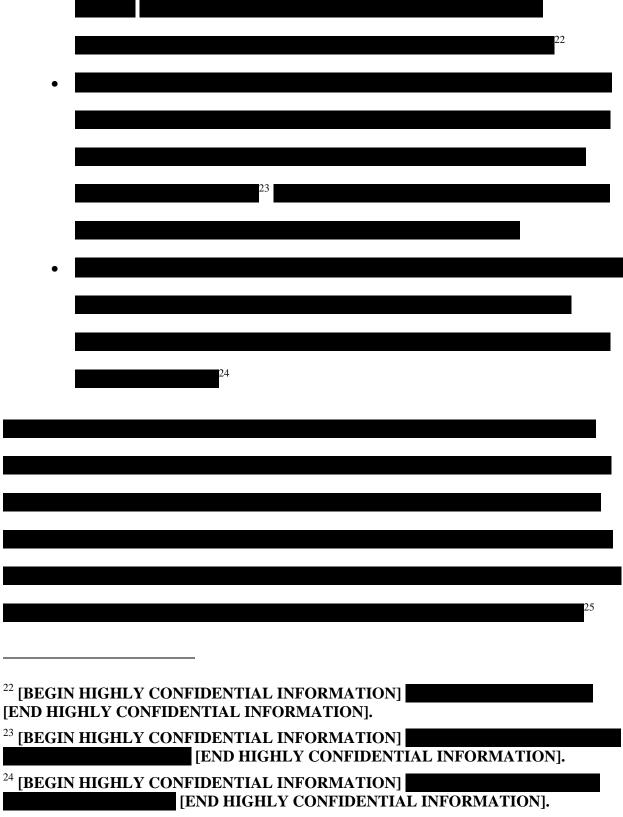
¹⁷ Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, 5 (filed May 17, 2012).

¹⁸ Verizon May 31 Ex Parte at 3.

SpectrumCo, Cox and Leap [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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²⁵ Letter of Adam Krinsky, counsel to Verizon Wireless, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4, 4 (June 20, 2012) (the "Krinsky *Ex Parte*").

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²⁶ *Id*.

²⁸ *Id*.

²⁷ *Id*. at 5.

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admissions is that Verizon has no near term need for spectrum [BEGIN HIGHLY
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²⁹ <i>Id.</i> at p. 4 (emphasis added).

³⁰ *Id*. at 8.

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Tak	king t	nis information into consideration, it is clear that the Commission should
consider th	e pro	posed assignments to T-Mobile as the starting point, not the end point. Absent
further volu	untar	transactions by Verizon, in addition to requiring the divestiture of the markets
to be assign	ned to	T-Mobile, and the divestiture of its 700 MHz A and B block licenses, the
Commissio	on sho	ould order Verizon to divest [BEGIN HIGHLY CONFIDENTIAL
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III. (тн	ER MATERIAL ISSUES REMAIN UNRESOLVED
	A.	The Trafficking Issue Remains
In c	comm	enting on the Verizon/SpectrumCo applications, in addition to questioning
Verizon's ı	use of	existing spectrum and its need (if any) for additional bandwidth, MetroPCS
demonstrat	ted th	at there was a substantial unresolved question whether SpectrumCo acquired its
AWS licen	ises w	ith a bona fide intent to construct facilities and provide beneficial services to the

³¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION].

public.³² This MetroPCS position was premised on the facts that (1) having held its AWS license for five years, SpectrumCo has failed to initiate service to the public in any market; and (2) an unambiguous statement by a SpectrumCo insider – Comcast CFO Michael Angelakis – that SpectrumCo "never really intended to build that spectrum."³³

In responding to this concern, the Joint Opposition filed by the Applicants offered unsupported, unconvincing third party rationalizations for the failure of SpectrumCo to build a single market or serve a single customer in over five years. Noticeably absent from the Joint Opposition was any declaration provided under penalty of perjury by Mr. Angelakis – or any other SpectrumCo representative with personal knowledge of the facts – attesting to the serious intention of SpectrumCo to construct and operate a broadband network *at any time*. To its credit, the Bureau recognized the patent inadequacy of the information provided by SpectrumCo with regard to the *bona fides* of its intention to construct and operate broadband wireless networks in the public interest. The Bureau letters of March 8, 2012, to the members of SpectrumCo³⁴ made detailed requests for information covering much of the information originally identified by MetroPCS as essential to evaluating a possible trafficking claim, including:

 All plans, analyses and reports on any options the participants considered to enter the wireless market from January 31 to the present. See, e.g., Bright House Information and Discovery Request No. 3.

³² See MetroPCS Ex Parte Communication, WT Docket No. 12-4, at 2 (filed Jan. 27, 2012).

³³ See Josh Wein, Comcast Never Planned to Build Out AWS Spectrum, COMMUNICATIONS DAILY, 8 (Jan. 6, 2012)

³⁴ *See* Letters from Rick Kaplan, Wireless Telecommunications Bureau, to Bright House Networks, LLC, Comcast Corporation, Time Warner Cable, Inc. and Cox TMI Wireless, LLC, WT Docket No. 12-4 (Mar. 8, 2012) (Information and Discovery Requests).

- All documents from January 31, 2006 to the present discussing SpectrumCo's efforts or plans to use the AWS spectrum, and its decision not to build a standalone system. *See*, *e.g.*, Bright House Information and Discovery Request No. 15.
- All efforts of SpectrumCo to shop the AWS spectrum. See, e.g., Bright House
 Information and Discovery Request No.16.
- All documents pertaining to the statements of Comcast CFO Michael Angelakis
 regarding the intentions (or lack of intention) of SpectrumCo and its members to
 use the AWS spectrum. See, e.g. Bright House Information and Discovery
 Request No. 17.

Counsel to MetroPCS now has had an opportunity to review the information filed by SpectrumCo in response to these specific inquiries, and is forced to conclude that SpectrumCo has failed to overcome the damning admission of Comcast's CFO that SpectrumCo "never really intended to build that spectrum:"

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In sum, SpectrumCo and its members have totally failed to rebut the substantial evidence that SpectrumCo acquired the AWS spectrum for the speculative purpose of profitable resale and not with a *bona fide* intention to provide service to consumers in the public interest. The Commission must take steps to prevent speculators from trafficking in spectrum licenses. Since it is apparent from the discussion in Section II of these comments that additional spectrum must be divested by Verizon/SpectrumCo/Cox in order for the Commission to find the transactions to be in the public interest, the Commission should consider having the proceeds from these divestitures be paid to the U.S. Treasury as a voluntary payment as a form of trafficking penalty.

³⁹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION].

19

B. The Need For Roaming Conditions Remains

Many opponents of the Verizon/SpectrumCo/Cox/Leap transactions have demonstrated the critical need to condition the proposed transaction with regard to roaming. ⁴⁰ The proposed transactions will remove an important constraint on Verizon Wireless's ability to charge super competitive rates for roaming, and therefore any grant must be conditioned with appropriate roaming conditions. The proposed assignment of spectrum to T-Mobile does nothing to mitigate or address the roaming issue. Consequently, MetroPCS incorporates here by reference its earlier stated position that Verizon Wireless must be required to offer roaming to other carriers at rates no less favorable than the resale rates offered to the cable companies in the disclosed Commercial Agreements.

The proposed spectrum divestitures to T-Mobile also fail to address or resolve the serious issues that have been raised with regard to the recent announcement that the five large cable operators – Comcast, Time Warner Cable, Cablevision, Bright House, and Cox – have announced that they plan to allow each of their customers to roam on the other's wireless Internet hot spots in the "most sweeping Wi-Fi roaming agreement struck by the industry to date." This nationwide Wi-Fi roaming deal, which already encompasses 50,000 hotspots that the participating companies collectively own, and, thus, is as extensive as many existing CMRS wireless networks, has raised understandable competitive concerns. The Alliance for Broadband Competitions (the "Alliance") has correctly noted that "the public has no assurance that the

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⁴⁰ *See*, Petition to Condition or Otherwise Deny of RCA – The Competitive Carriers Association ("RCA Petition") at p. 35, 56; Petition to Deny of NTCH ("NTCH Petition") at p. 6-7; Petition to Deny of Free Press at p. 48.

⁴¹ See, e.g., Press Release, "Major U.S. Cable Companies Join Forces on WiFi", YAHOO! FINANCE (May 21, 2012) (available at http://finance.yahoo.com/news/major-u-cable-companies-join-100000756.html).

Cable WiFi network will be equally available to all consumers."⁴² Disturbingly, the response of the cable company representatives to this Alliance claim only serves to exacerbate the concern. In a recent meeting with the Commission, Comcast's Senior Vice President and General Manager of Wireless Services, Tom Nagel, suggested that Comcast only intends, "to provide WiFi off-loading services to wireless carriers when there is a viable financial model to do so."⁴³ This clearly suggests that the cable companies have no present intention to make this WiFi network broadly available to wireless carriers for roaming purposes.

One appropriate manner for the Commission to mitigate the unfortunate loss of SpectrumCo as a potential facilities-based broadband wireless roaming partner is to impose a condition on the approval of the Verizon/SpectrumCo/Cox transactions to ensure that the cable companies make their WiFi offload networks available on commercially reasonable terms to any requesting wireless carrier as is currently required under the Commission's data roaming rules for any mobile data service. MetroPCS submits that this outcome is compelled by the Commission's data roaming rule. Section 20.12(e) of the Commission's Rules provides that a "facilities-based provider of mobile data services is required to offer roaming arrangement to other such providers on commercially reasonable terms and conditions ..." Section 20.3 of the Commission's Rules defines "commercial mobile data service" as

any mobile data service that is not interconnected with the public switched network and is: (i) Provided for profit; and (ii) Available to the public or to such classes of eligible users as to be effectively available to the public.

⁴² Letter of Maura Corbett, Executive Director of the Alliance for Broadband Competition to Marlene Dortch, Secretary (WT Docket No. 12-4) dated May 20, 2012 at p. 2 (the "Alliance *Ex Parte*").

21

⁴³ Letter of Brien C. Bell, Counsel to Comcast to Marlene Dortch, Secretary (WT Docket No. 12-4) filed June 4, 2012 at p. 2(emphasis added) (the "Bell *Ex Parte*").

Section 20.3 goes on to define "mobile service" as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves ..." Clearly the WiFi roaming that the cable companies are providing each other is a mobile data service since it is being provided for a profit (e.g., to their own customers) and is available to the public or such classes of eligible users as to be effective available to the public. Accordingly, as facilities-based providers of commercial mobile data services, the cable companies are *required* to offer roaming to other such providers on commercially reasonable terms and conditions. ⁴⁴ A license condition to this effect is justified because the cable companies have equivocated in their statements to the Commission in a manner that calls into question their willingness to abide by the data roaming rule.

Imposing the data roaming condition on the cable companies' WiFi network also will serve to mitigate the concern expressed by the Alliance that the cable companies will provide exclusive or preferential access to Verizon as a result of the cooperative Commercial Agreements under which a Joint Operating Entity ("JOE") is being created by Verizon and the cable companies to develop technology to integrate wireless and wireline products and services. Any arrangement between Verizon and the cable companies with respect to the Cable WiFi hotspots would serve as a benchmark of the "commercially reasonable" arrangements to which other wireless companies would be entitled." This would serve the public interest.

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⁴⁴ 47 C.F.R. § 20.12(e)(1).

⁴⁵ See Alliance Ex Parte at p. 1-2.

⁴⁶ The cable companies should not be heard to complain about this outcome since Comcast's representative has indicated to the Commission that the "WiFi network is accessible to customers without regard to the customer's wireless provider, and that nothing in the commercial agreements will change that." *See* Bell *Ex Parte* at p. 2.

IV. CONCLUSION

In sum, as is set forth in detail above, while the proposed divestiture of spectrum licenses from Verizon to T-Mobile is a step in the right direction, it is not sufficient to permit the Commission to make the requisite public interest findings. Further conditions are necessary.

Respectfully submitted,

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